

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 23.05.2019

1. CRM-M-22312-2019

Harjinder Singh

... Petitioner

Vs.

State of Punjab

... Respondent

2. CRM-M-22393-2019

Bhinder Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Tarunveer Vashist, Advocate
for the petitioner (in both cases).

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in both these petitions is for grant of regular bail in FIR
No.347 dated 25.12.2018 under Section 18 of NDPS Act, registered at Police
Station Civil Lines, Patiala, District Patiala.

Learned counsel for the petitioners submits that as per allegations

in the FIR, the police received a secret information at about 7.30 pm that Bhinder Singh, Harjinder Singh @ Jinder and Pawan Kumar are habitual in selling the opium and if a naka is laid, they can be arrested along with opium. On which, the Investigating Officer sent an information to the police station at about 8.00 p.m. for registration of the FIR. The DDR No.38 was recorded by in the police station at 9.15 p.m. and thereafter, the police laid a naka. Further, as per the zimini recorded by the police, the petitioners were apprehended at about 8.30 p.m. and thereafter, notice under Section 50 of NDPS Act was served upon the petitioners, in which they gave an option to be searched before a Gazetted Officer. Thereafter, DSP was called at the spot and in his presence, the search/personal search of the accused persons was conducted and recovery of 6 kg of opium was effected.

Learned counsel for the petitioners has argued that there is a mention of FIR number along with complete details thereof on the documents like recovery memo, arrest memo, personal search memo, which were prepared prior to sending of information/ruqa to the police station. It is further argued that in some of the documents, date is given as 25.12.2018, whereas in some documents, it is given as 26.12.2018. It is also argued that the police party was on a private vehicle which raises a suspicion.

Learned counsel has further relied upon **Didar Singh @ Dara Vs. State of Punjab, 2010 (3) RCR (CrI) 337**, to argue that FIR number was mentioned on the documents, which were prepared prior to registration of the FIR and it is not explained how the FIR number is mentioned on these documents, the Hon'ble Division Bench acquitted the accused.

Learned counsel has relied upon a judgment of Division Bench of

this Court in **Ranbir Singh Vs. State of Haryana, 2001 (1) RCR (Crl.) 674** to argue that if the police party was travelling to a place of recovery in a private jeep and the driver of the jeep is not examined, the accused is entitled to acquittal.

Learned counsel has also relied upon a judgment of the Hon'ble Supreme Court in passed on 16.08.2018 in **Criminal Appeal No.1880 of 2011 (Mohan Lal Vs. The State of Punjab)** to argue that the Investigating Officer is the same, who conducted the search and thereafter, the entire investigation was also conducted by him and no second Investigating Officer was called at the spot.

Learned State counsel has filed the custody certificates dated 23.05.2019 of both the petitioners in the Court today and has opposed the prayer for bail.

After hearing learned counsel for the parties, I find no ground to grant regular bail to the petitioners, for the following reasons: -

- (a) The FIR was registered on a secret information, which was sent to the police station by way of ruqa at 8.00 p.m. and the DDR No.38 was recorded at 9.15 p.m. and consent memo, recovery memo, personal memo and arrest memo were admittedly prepared, subsequent to registration of the FIR and therefore, judgment of the Hon'ble Division Bench of this Court in **Didar Singh @ Dara's** case (supra) has no applicability in the present case.
- (b) It is not disputed that lot of time was taken in conducting the investigation, right from 8.30 p.m., when the ruqa was sent and the FIR was registered, the petitioners were apprehended and consent

memo was recorded, DSP was called at the spot, who again recorded the consent memo of the accused persons and thereafter, recovery was effected, as per the police zimini, it took more than 6-7 hours in completing the investigation, which continued upto 4.00 a.m. in the morning on 26.12.2018, therefore, dispute regarding mentioning the date as 26.12.2018, in some of the documents, is to be decided during the course of trial, on the basis of evidence about the time, when these documents were prepared and this argument for the defence cannot be considered at this stage.

- (c) So far as the argument raised on behalf of the petitioners that the police party was on a private vehicle, it has not come in the FIR that the private vehicle was driven by a person other than the police official, whose statement is not recorded and as per the report under Section 173 Cr.P.C., the statements of all the persons, who were part of the raiding party, have been recorded under Section 161 Cr.P.C. Therefore, the judgment in **Ranbir Singh's** case (supra) is distinguishable at this stage and this fact is to be seen during the trial, after appreciating the entire evidence, which has come on record.
- (d) The judgment of the Hon'ble Supreme Court in **Mohan Lal's** case (supra) is also not applicable in this case, as subsequent to recording consent of the petitioners, who opted to be searched before a Gazetted Officer, the DSP was called at the spot and subsequent investigation was conducted in his presence and

therefore, at this stage, no such opinion can be formed.

(e) The recovery from the petitioners as per FSL report is opium.

For the reasons recorded above, I find no ground to grant regular bail to the petitioners at this stage and both the petitions are dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

23.05.2019
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No